

Ex 1

**In the Matter Of:**

**NEW ENGLAND COMPOUNDING PHARMACY INC. PRODUCTS LIABILITY**

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**VIDEOTAPED DEPOSITION OF SAMUEL J. PENTA**

*December 04, 2015*

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1                   UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF MASSACHUSETTS

3  
4                   ----- x  
5   IN RE: NEW ENGLAND COMPOUNDING         MDL No. 2419  
6   PHARMACY, INC. PRODUCTS                   Master Dkt.  
7   LIABILITY LITIGATION                        1:13-md-02419-RWZ

8                   ----- x  
9   THIS DOCUMENT RELATES TO:

10   All Actions

11                   ----- x  
12  
13                   VIDEOTAPED DEPOSITION OF SAMUEL J. PENTA

14                   Friday, December 4, 2015

15                   9:00 a.m.

16                   Seaport Boston Hotel

17                   1 Seaport Lane

18                   Boston, Massachusetts 02210

19                   Michelle Keegan, Court Reporter

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1 A P P E A R A N C E S (continued):

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1 and reviewing the documents, came up with as a  
2 vote, an advisory letter.

3 Q. Why were these treated as nondisciplinary?

4 A. That was at the discretion of the board.

5 Q. And since they were nondisciplinary, these  
6 reports were never shared with the national board,  
7 were they?

8 A. They were not. They were not shared.

9 Q. Do you have any information at all that  
10 these three advisory rulings were ever furnished  
11 to a third party writing or inquiring about NECC?

12 MR. DIGANGI: Objection.

13 A. I'm not aware.

14 Q. All right. And these advisory rulings  
15 addressed conduct that was precisely what NECC was  
16 up to in connection with the fungal meningitis  
17 outbreak. Correct?

18 MR. DIGANGI: Objection.

19 A. (No verbal response)

20 Q. In each three of these, NECC was  
21 soliciting out-of-state prescriptions. Correct?

22 A. Correct.

23 Q. The people that got sick or died in the  
24 fungal meningitis outbreak were all out-of-state



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1 residents, weren't they?

2 A. That's correct.

3 Q. You found when you did your investigation  
4 in September or October of 2012 that NECC was not  
5 requiring individual patient-specific  
6 prescriptions. Correct?

7 A. That's correct.

8 Q. You found in South Dakota that NECC was  
9 telling those folks they didn't have to do  
10 individual patient prescriptions, didn't you?

11 MR. ELLIS: Objection.

12 A. They were advised by these advisory  
13 letters that the conduct was not acceptable, it is  
14 not compliant. It was advised in these advisory  
15 letters. It's advised again in the 2006 consent  
16 agreement.

17 Q. We'll get to that.

18 A. It's advised in multiple places, advisory  
19 letters and consent agreement, not to -- to use  
20 patient-specific prescriptions.

21 Q. All right. Well, let's look at the  
22 January 2006 consent agreement. It's Exhibit 722.

23 (Exhibit 722 marked for identification)

24 A. Before we start, can I --



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1       Q. And is there any indication in the records  
2 of the Board of Registration in Pharmacy that  
3 there was another letter after November 8th, 2004,  
4 that says "No deal, this is not acceptable"?

5           MS. DOUGHERTY: Objection.

6           MR. ELLIS: Objection.

7           MR. DIGANGI: Counsel, for the record,  
8 when you say "this is not acceptable," do you mean  
9 the entire proposal dated November 8th, 2004, or  
10 the attachments, Exhibit A and B?

11          MR. GIDEON: I'll start with the former.

12          MR. DIGANGI: Thank you.

13           Do you understand the question, sir?

14          Q. Is there any correspondence back from the  
15 Board of Registration in Pharmacy after  
16 November 8th, 2004, that says your -- the contents  
17 of your letter of November 8th with the  
18 attachments are unacceptable to us, the Board of  
19 Registration in Pharmacy?

20          A. So in the consent agreement of 2006, it's  
21 referenced in the PSI agreement there will be  
22 patient-specific prescriptions only. And it's  
23 consenting to the consent agreement they signed  
24 that they'll conform to all state, local, and



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1       federal laws.

2           Q. So is the only response to this letter,  
3       then, the content we would draw from the consent  
4       agreement of January 10th, 2006?

5           A. I just want to check one document here.

6           Q. I'm not going to rush you. Are you  
7       looking for the consent agreement?

8           A. I am looking for --

9           Q. I want to save you as much time as I can.  
10      All of the advisory letters are dated  
11      September 30th, 2004. The letter we're looking at  
12      is 11/8/04.

13           A. So this is referenced in -- the  
14      prescription blanks are referenced and only a  
15      prescription form in the PSI report and then again  
16      in the consent agreement for following all state,  
17      local, and federal laws.

18           Q. Is it correct, then, that the only  
19      substantive response by the Board of Registration  
20      in Pharmacy to Cadden's letter of November 8th,  
21      2004, with this policy and procedure attached and  
22      this pharmacy order form attached is the content  
23      of the January 10th, 2006, consent order?

24           MR. DIGANGI: Objection.



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1 it's Friday afternoon and I know you want to get  
2 out of here.

3 You were asked a lot of questions today  
4 about Massachusetts Board of Pharmacy's  
5 requirement of patient-specific prescriptions. Do  
6 you remember those lines of questioning?

7 A. Yes, sir.

8 Q. And other states also, at least certain  
9 other states also require compounding pharmacies  
10 to have patient-specific prescriptions. Correct?

11 A. Yes, sir.

12 Q. Okay. Now, I want to show you what's been  
13 marked as Exhibit 39 in this litigation. And you  
14 don't have to see the whole thing. I'll represent  
15 what this is. It's a file from Saint Thomas  
16 Outpatient Neurological Clinic about their  
17 ordering from NECC as well as a prior vendor of  
18 preservative-free MPA.

19 And what I'd like to do is direct you to  
20 page -- at the bottom right-hand side -- I'm  
21 sorry. There's actually -- that's right. This  
22 document is a little messed up. It has certain  
23 Bates numbers on the bottom right-hand side but  
24 then it's not consistent with Bates numbers



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1 about that?

2 A. No, I did not.

3 Q. There were some questions suggesting that  
4 the board should have done something in response  
5 to New England Compounding not requiring patients  
6 prescription prescriptions.

7 Looking at this, do you think Saint Thomas  
8 Outpatient neurological clinic should have done  
9 something about complying with the law and  
10 ordering patient-specific -- and having  
11 patient-specific prescriptions?

12 MR. GIDEON: Objection. Form.

13 A. They should have ordered patient-specific  
14 prescriptions for a legitimate medical purpose for  
15 a legitimate medical patient.

16 Q. Mickey Mouse really doesn't do it, does  
17 it?

18 A. No, sir.

19 Q. It violates Massachusetts law, doesn't it?

20 A. It does, sir.

21 Q. So there was basically conspiracy here  
22 between Saint Thomas Outpatient neurological  
23 clinic and New England Compounding Center to evade  
24 the patient-specific prescription requirements of



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